IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.1089 OF 2005

Lambason Hotel and Restaurant
Pvt. Ltd. .....Appellant

Versus

Keki Jamshed Irani & Ors. .....Respondents

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Shri.Chetan Kapadia with Nandu Pawar for the Appellant.

Shri.Vinod Savaji with Shri Sudarshan Shinghram for the Respondent.

Shri P.V. Yadav, S.O. of Court Receiver Dept.

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CORAM : DR.D.Y. CHANDRACHUD, J.

DATE : DECEMBER 6, 2005

P.C.

1. By the order of the City Civil Court that is challenged in these proceedings, a motion for the restoration of possession to Respondent No.11 has been allowed. Respondent No.11 had been forcibly removed from possession without an adjudication of his rights as an assignee from the original tenant under a registered deed of assignment. The order impugned here provides restitution to him for wrongful dispossession.

2. A Suit bearing No.7162 of 1971 was instituted before the City Civil Court for dissolution and accounts of two partnership firms (Jamshed B. Irani & Sons and

Crown Anchor Beer Bar and Restaurant). In that suit the Court Receiver came to be appointed as Receiver of the properties of the partnership on 20th November, 1972. The Receiver took symbolic possession of the properties of the partnership. The dispute in the present case relates to a shop, shop No.4 that is situated on the ground floor of a building called Sunny House at the junction of Merewether Road and Mandlik road, Opposite Taj Mahal Hotel, Bombay 400 001. Shop No.4 was in the occupation of a tenant. Some time in the year 1978, the Court Receiver instituted a suit for eviction against the original tenant of Shop No.4. In an appeal which came up before this Court out of the suit for dissolution and accounts, a consent decree was arrived at between the partners of the erstwhile partnership on 20th September, 1988. The 11th respondent claims its right, title and interest under a registered deed of assignment dated 28th April 1994 with the erstwhile tenant. The suit for eviction that was filed by the Receiver against the original tenant was decreed by the Small Causes Court on 23rd January, 2001. The tenant instituted an appeal in which in April 2001 the decree came to be stayed. On 28th August 2002 there was a consent decree in the first appeal before this Court in the suit for dissolution and accounts. Under this decree, the Appellant acquired the assets of the partnership at and for a consideration of

Rs.1,35,00,000/-. The Appeal filed by the original tenant before the Small Causes Court against the decree for eviction was withdrawn on 12th April, 2005. The Appellant took out a Chamber Summons before the City Civil Court with notice to the Court Receiver seeking forcible possession of the premises of shop No.4. The City Civil Court by an order dated 13th June 2005 ordered forcible possession and on 24th June 2005 possession was handed over to the Appellant.

3. The 11th respondent instituted a declaratory suit before the Small Causes Court on 24th June 2005. When the representative of the Court Receiver visited the premises for taking forcible possession, he was requested to furnish some time for moving the Court. This request was not heeded to and forcible possession of the premises was taken from the 11th respondent and handed over to the Appellant. Eventually the Appellant took out a motion for restoration of possession.

4. The Learned Trial Judge allowed the motion by the impugned order dated 25th October 2005. The Learned Trial Judge noted that there was a registered deed of assignment dated 24th April 1994 between the original tenant and the 11th respondent. The report of the Court Receiver also disclosed that the 11th respondent was found in possession of the shop. The attention of the

Court was drawn to the judgment of the Small Cause Court in RAE & R Suit No.1276/4564 of 1978 in which there was a discussion about the handing over of the shop to a third party namely, the 11th respondent to conduct its business. The Learned Judge held that once a copy of the registered deed of assignment was produced by the 11th respondent and dispossession is not disputed at the time of execution proceedings, it is obligatory for the court to hear the occupant or the person in possession of the premises. In the proceedings before the Court, the 11th respondent was not a party to any of the suits. As a third party who was in possession as an assignee, he could not have been removed forcibly at the behest of any of the parties. It was the duty of the Court Receiver to approach the Court and set out the reasons for the resistance before the Court and the Receiver transgressed his powers by dispossessing the 11th respondent. The Appellant as purchaser stepped into the shoes of the Landlord and even a trespasser cannot be evicted unless due process of law is followed. The claim to tenancy by the 11th Respondent could not be determined by the City Civil Court but by the Court of Small Causes. The notice of motion was made absolute by directing that possession be restored to the 11th respondent.

5. On behalf of the Appellants the order of the

Trial Judge has been assailed by submitting that in the suit for dissolution of partnership and for accounts the Court Receiver was appointed as Receiver in 1972. The property was therefore **custodia legis** since then. Hence, the Appellant submitted that the assignment by the tenant to the 11th respondent on 28th April, 1994 was contrary to law since it was not open to the tenant to assign his rights in the property which was in the custody of the Court Receiver. Consequently it has been submitted that the Appellant was justified in moving the City Civil Court for forcible possession and the Trial Judge was justified in the earlier order of 13th June 2005 directing that the 11th respondent be forcibly removed from the premises.

6. In considering the matter and the submissions, it must be noted that the Court Receiver was appointed as a Receiver of the business and assets of the partnership, in a suit for dissolution. The Receiver instituted eviction proceedings in the Small Causes Court against the original tenant. The tenant executed a registered deed of assignment in favour of the 11th respondent for consideration on 28th April, 1994. The Appeal against the original decree was withdrawn by the heirs of the original tenant. The decree of the Small Cause Court was liable to be set in execution on the

application of the Receiver and/or, upon his discharge, by the Landlord or his successor in interest. If in the course of the execution of the decree, the 11th respondent obstructed the execution of the decree, the rights which the 11th Respondent claimed would have to be adjudicated upon by the executing Court. The procedure under Order - XXI, Rule 97 would have to be set in motion and the right if any that the 11th respondent claimed in pursuance of the assignment dated 24th April 1994 would have to be adjudicated upon. There is no question in this situation of removing an obstructionist forcibly until the right which he claimed in respect of his occupation of the premises was adjudicated upon by a process known to Law.

7. The question which falls for consideration, is as to whether this legal position would be altered by the circumstance that the Court Receiver came to be appointed as a Receiver in respect of the business and assets of the partnership in the suit for dissolution in November 1972. The appointment of a Receiver would not alter the legal position because it is a settled principle of law that the appointment of a receiver would not disrupt or displace the ordinary incidents of tenancy which are regulated by the law regulating the relations of landlord and tenant.

8. This issue is no longer res integra but has been dealt with in a judgment of the Supreme Court in **Anthony C.Leo, V/s. Nandlal Bal Krishnan, AIR-1997 SC 173.** The Supreme Court summarised the legal position in the following terms :-

> "Where a Rent Act is applicable, the interse rights and obligations of the landlord and tenant are regulated and controlled by such Rent Act. In areas where any special law governing the incidences of tenancy is not applicable, the law relating to lessor and lessee as envisaged by the general law of the land, namely, Transfer of Property Act, will regulate and determine inter se rights and obligations which a third party may have in respect of a property in which a receiver has been appointed, the receiver, like a party to the suit, will have same limitation. The receiver will be bound by the incidences of tenancy flowing from the statute regulating and determining interse rights of landlord and tenant. Therefore, there is no manner of doubt that no

order for eviction of the tenant can be passed by the Court at the instance of its officer, the receiver, without taking recourse to appropriate proceedings for eviction of the tenant under the appropriate statute regulating and governing the inter se rights of landlord and tenant. It may also be emphasised here that even apart from an eviction proceeding, any incidence of tenancy which is regulated and controlled by a special statute cannot be altered, varied or interfered with except in accordance with the provisions of such statute. The Court in such cases has no jurisdiction to pass orders and direction affecting the right of the tenant protected, controlled or regulated by the Rent Act on the score of expediency in passing some order or direction for the maintenance and preservation of the property in custodia legis."

9. The Supreme Court carved out a limited exception where, for instance a tenant is making an unauthorised or illegal construction in tenanted premises in which

case the land lord can prevent such activities by moving an appropriate Court seeking a prohibitory and mandatory order without seeking the eviction.

10. In the present case it was open to the Receiver to seek execution of the decree which he had obtained in a suit for eviction. The Appellant however, chose not to move the Receiver to do so and instead the Appellant moved the City Civil Court for an order of forcible possession. The Appellant sought recourse to a procedure which was unusual and not known to the law. Whether or not the 11th respondent has a legitimate claim or entitlement is a matter which ought to be adjudicated in appropriate proceedings when the decree for eviction that is obtained against the original tenant is set in execution. It would be permissible even now to adopt recourse to execution. Hence, the impugned order passed by the learned Trial Judge restoring the possession of the 11th respondent cannot be faulted. The Court was bound by the principles of restitution to place the 11th respondent in the possession in which he would originally have been, but for the irregular manner in which he was forcibly dispossessed from the premises.

11. The appeal is accordingly dismissed, though, with the clarification that it would be open to the

Appellant to pursue the remedies available in law to them for securing the execution of the decree of the Small Causes Court in RAE & R suit No.1276/4564 of 1978.

(DR. D.Y. CHANDRACHUD, J.)